

December 30, 2008

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

Email hearingexaminer@kingcounty.gov

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File Nos. **L01S0049 & L08AP005**

HARTVIG SHORT PLAT

Short Plat Appeal

Location: 10531 West Snoqualmie Road Northeast (Postal City: Carnation, Washington)

Appellant: **William Hartvig**
PO Box 433
Seahurst, Washington 98062
Telephone: (253) 854-1000

Applicants: **William Hartvig**

and

Karen Hartvig
PO Box 1315
Seahurst, Washington 98062
Telephone: (206) 824-2119

King County: Department of Development and Environmental Services
represented by **Trisha Bull & Alex Perlman**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-6758 & (206) 296-7222
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Revise condition 3.e. and f.; deny remainder of appeal
Department's Final Recommendation:	Revise condition 3.e. and f.; modify condition 5.c.; and strike condition 13
Examiner's Decision:	Revise condition 3.e. and f.; modify condition 5.c.; and strike condition 13

ISSUES AND TOPICS ADDRESSED:

Absence of intent to abandon non-conforming use; joint use driveway (JUD) improvements; retention of access easement; retention of well serving non-conforming use; compliance with prior Code Enforcement proceeding decision.

SUMMARY OF DECISION:

The property owners' appeal of conditions of short subdivision approval is granted; conditions in dispute are modified/deleted.

EXAMINER PROCEEDINGS:

Pre-hearing conference:	May 20, 2008
Hearing opened:	December 2, 2008
Hearing closed:	December 2, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On March 14, 2008 King County Department of Development and Environmental Services, Land Use Services Division (DDES), issued a Report and Decision on the short subdivision application of William Hartvig and Karen Hartvig. On March 31, 2008, the Applicants filed a Notice of Appeal and on April 4, 2008 a Statement of Appeal.
2. The issues raised by the Statement of Appeal are:

First, whether the applicant must comply with the Hearing Examiner's decision regarding Code Enforcement case E0600091, to remove junk and debris on the site.

Second, is whether sheds and a cabin, which existed as legal non-conforming structures on the site, must be removed.

Third, whether pullout pads and grades in excess of 12 percent within the proposed JUD must be paved.

Fourth, whether a driveway, alleged to be abandoned, that exists on the site must be removed.

Fifth, whether an existing well on the property must be abandoned.
3. A cabin on the site had existed as a legal, non-conforming use. That cabin was destroyed by fire in October 2007. The parties have agreed that requests for permits by the Appellants, seeking to rebuild the non-conforming cabin, show that the Appellants do not intend to abandon this non-conforming use, and that DDES can continue to work with the Appellants on the building application process.

4. On May 22, 2008 the King County Hearing Examiner issued an Order of Dismissal in Code Enforcement proceeding No. E0600091, based upon certification from DDES that code compliance had been achieved in that matter.
5. King County has issued a road variance in connection with the subject short subdivision, allowing the proposed JUD Tract to be improved as a private driveway serving both lots. The road variance contains specific conditions for the improvement of the JUD. The parties have agreed that the conditions of the road variance shall control development of the JUD, and that condition “3.e.” of the short plat approval should be modified in accordance with Exhibit 1.
6. The parties have agreed that the existing driveway on the site that DDES had characterized as “abandoned” is subject to an easement to Puget Sound Energy (PSE), and has not been abandoned. The Appellants have agreed that this access easement shall not be used as a residential driveway, and that condition “3.f.” can be modified as proposed by DDES in Exhibit 1.
7. DDES has stated that the requirement for abandonment of the existing well, as set forth in condition “5.c.”, was based upon the Applicant’s proposal and preliminary Health Department review. DDES does not have an independent basis for requiring that the well be abandoned, and has agreed that condition “5.c.” may be modified to eliminate a requirement that the existing well be abandoned.

CONCLUSIONS:

Conditions of the short plat approval should be modified to reflect the foregoing findings and agreements by the parties.

DECISION:

The appeal by William Hartvig and Karen Hartvig of the decision on short subdivision file no. L01S0049 should be granted. The conditions of the March 14, 2008 Report and Decision approving the short plat application are modified as follows:

Condition 3 is modified to provide as follows:

3. Road Standards (KCC 14)
1993 King County Road Standards

Minimal roadway improvements are required to address access requirements and impacts to existing roads and right-of-way. However, engineering plans are not required to address these improvements. Any construction or upgrading of public and private roads shall comply with the 1993 King County Roads Standards established and adopted by Ordinance No. 11187, as amended (KCRS). The proposed short subdivision shall comply with the KCRS including the following requirements, unless otherwise approved by DDES:

- a. A road variance application regarding frontage improvements and the width of the joint-use-driveway (JUD) was approved by King County on May 14, 2004 (File No. L03V0021). The final engineering plans for the short plat shall comply with all conditions of approval for the road variance decision.
- b. The above variance granted approval for the construction of two widened 8-foot gravel shoulder areas (each 30-foot in length) in lieu of full length frontage improvements. The

widened areas are located 410-feet and 510-feet respectively, measured along the street south of the existing driveway.

- c. West Snoqualmie Valley Road Northeast is classified as a rural minor arterial. Additional right-of-way shall be dedicated along the property frontage to provide 42-feet from the centerline of roadway (Section 2.02K).
- d. Direct access to the arterial road from the abutting lot is restricted with infrequent access points. Driveways shall be consolidated to a single point by means of a JUD per Section 2.02. A note to this effect shall be placed on the final recorded map page.
- e. Per Variance File No. L03V0021 the proposed JUD Tract shall be improved as a private JUD serving both lots. These lots shall have undivided ownership of the tract and be responsible for its maintenance. As specified in KCRS 3.01C, the driving surface shall be paved 18 feet in width except as modified by the road variance. The JUD Tract shall extend past the 20-foot pullout area near the first building site. An easement may be provided to Lot No. 2 beyond the end of the JUD. Please look under DDES application packets at <http://www.metrokc.gov/ddes/forms> for detailed information on driveway connections.
 - 1. Twenty-foot by twenty-foot pads are required at two locations. The first is located at the connection with the arterial consistent with KCRS landing criteria for JUDs and must be paved.
 - 2. The second pad is to be located at the top of the steep driveway grade. This pad can be gravel.
 - 3. The JUD between the pads may be graded and reduced to 13 feet in width. It is recommended for grades exceeding 12 percent, the JUD be paved.
- f. The existing PSE access easement located along the arterial (near the southeast property corner) may remain. This access easement shall not be used as a residential driveway.

Modifications to the above road improvement conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08. Any request for a road variance shall be submitted to DDES on the appropriate form and with the minimum fee deposit. Other engineering details that may be shown on the preliminary site plan with the exception of the above may not have been reviewed for compliance with KCRS. If differences exist, the final design shall be modified to meet KCRS.

Condition 5 is modified to provide as follows:

- 5. Health (KCC 13)
 - a. The applicant shall obtain final approval from the King County Health Department (Health) for domestic water supply and method of sewage disposal. Final Health approval is required and supplements the Health documents obtained prior to short plat submittal.
 - b. The site plan shall identify the 100-foot radius for the proposed well.

- c. If abandoned, the existing well shall be properly abandoned according to the specifications listed in Chapter 173-160 of the Washington Administrative Code. The final engineering plans approved by LUSD shall also indicate that the Washington State Department of Ecology shall be contacted prior to construction. This condition 5.c. is not intended to be an independent requirement that the existing well be abandoned, but has effect only in the event that the well is abandoned as part of the short plat development or to meet requirements of other agencies.

Condition 13 is deleted.

ORDERED this 30th day of December, 2008.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE DECEMBER 2, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L01S0049.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull, Alex Perlman and Curt Foster, representing the Department, William Hartvig, the Applicant/Appellant, and Karen Hartvig, Applicant.

The following Exhibits were offered and entered into the record:

- | | |
|---------------|--|
| Exhibit No. 1 | Department of Development and Environmental Services revised conditions |
| Exhibit No. 2 | Department of Development and Environmental Services Report and Decision, dated March 14, 2008 |
| Exhibit No. 3 | Statement of Appeal received by DDES April 4, 2008 |
| Exhibit No. 4 | Letter to William Hartvig from Jarrod Lewis with attachments dated October 24, 2008 |
| Exhibit No. 5 | Memorandum to Amy Calderwood, Ombudsman-Director from Stephanie Warden dated October 29, 2008 |